AGREEMENT BETWEEN THE GOVERNMENT OF THE ARGENTINE REPUBLIC AND THE GOVERNMENT OF UKRAINE ON THE PROMOTION AND RECIPROCAL PROTECTION OF INVESTMENTS

The Government of the Argentine Republic and the Government of Ukraine, (hereinafter referred to as the "Contracting Parties"),

Desiring to intensify economic cooperation to the mutual benefit of both countries,

Intending to create and maintain favourable conditions for investments of investors of one Contracting Party in the territory of the other Contracting Party,

Recognizing that the promotion and reciprocal protection of such investments on the basis of an agreement will be conducive to the stimulation of individual business initiative and will increase prosperity in both States,

Have agreed as follows:

Article 1. Definitions

For the purposes of this Agreement:

(1) The term "investment" means, in conformity with the laws and regulations of the Contracting Party in whose territory the investment is made, every kind of asset invested by an investor of one Contracting Party in the territory of the other Contracting Party, in accordance with the latter's laws. It includes in particular, though not exclusively:

(a) movable and immovable property as well as any property rights, such as mortgages, liens, pledges and similar rights;

(b) shares, stocks and debentures of companies or any other kind of participation in companies;

(c) title to money and claims to performance having an economic value; loans only being included when they are directly related to a specific investment;

(d) intellectual property rights, including in particular copyrights, patents, industrial designs, trademarks, trade- names, technical processes, know-how and goodwill;

(e) business concessions conferred by taw or under contract, including concessions to search for, cultivate, extract or exploit natural resources.

(2) The term "investor" means any natural or legal person who invests in the territory of the other Contracting Party.

(a) The term "natural person" means any natural person having the nationality of either Contracting Party in accordance with its laws;

(b) The term "legal person" means any entity or company constituted or incorporated in any other way in accordance with the laws and regulations of either Contracting Party and having its seat in the territory of that Contracting Party.

(3) The term "returns" means all amounts yielded by an investment such as profits, dividends, interests, capital gains, royalties, fees and other current income.

(4) The term "territory" means the national territory of either Contracting Party including those maritime areas adjacent to the outer limit of the territorial sea of the national territory, . over which the Contracting Party concerned may, in accordance' with international}! law, exercise sovereign rights or jurisdiction.

Article 2. Promotion and Protection of Investments

(1) Each Contracting Party shall encourage and create favourable conditions for investors of the other Contracting Party to make investments in its territory and shall admit such investments in accordance with its laws and regulations.

(2) Each Contracting Party, once it has admitted investments in its territory by investors of the other Contracting Party, shall grant full legal protection to such investments.

Article 3. Treatment of the Investments

(1) Each Contracting Party, shall at all times ensure fair and equitable treatment of the investments and returns by investors of the other Contracting Party and shall accord them treatment which is no less favourable than that accorded to investments and returns of its own investors or of investors of third States, whichever is more favourable.

(2) Each Contracting Party shall accord to investors of the other Contracting Party, as regards management, maintenance, use, enjoyment or disposal of their investments, treatment which is fair and equitable and not less favourable than that which it accords to its own investors or to investors of any third States, whichever is more favourable.

(3) The provisions of Paragraphs (1) and (2) of this Article shall not be construed so as to oblige one Contracting Party to extend to the investors of the other Contracting Party the benefit of any treatment, preference or privilege which may be extended by the former Contracting Party by virtue of:

(a) any customs union, free trade area, common market, or a monetary union or similar international agreements leading to such unions or institutions or other forms of regional economic cooperation agreement to which either of the Contracting Party is or may become a Party;

(b) any international agreement or arrangement relating wholly. or mainly to taxation;

(c) the bilateral Agreements providing for concessional financing concluded by the Republic of Argentina with the Republic of Italy on 10 December 1987 and with the Kingdom of Spain on 3 June 1988.

Article 4. Compensation for Losses

When investments by investors of either Contracting Party suffer losses owing to war, armed conflict, a state of national emergency, revolt, insurrection, riot or other similar events, or resulting from arbitrary action by the authorities in the territory of the other Contracting Party, they shall be accorded by the latter Contracting Party treatment, as regards restitution, indemnification, compensation or other settlement, not less favourable than that which the latter Contracting Party accords to its own investors or to investors of any third State.

Article 5. Expropriation

(1) Investments of investors of either Contracting Party shall not be nationalized, expropriated or subjected to measures having effect equivalent to nationalization or expropriation (hereinafter referred to as “expropriation") in the territory of the other Contracting Party except for a public purpose. The expropriation shall be carried out under due process of law, on a non discriminatory basis and shall be accompanied by provisions for the payment of prompt, adequate and effective compensation. Such compensation shall include interest at a normal commercial rate from the date of expropriation until the date of payment and shall, in order to be effective, be paid and made transferable, without delay, in the currency in which the investment has been made, or in any freely convertible currency, whichever is accepted by the investor affected.

(2) The investor affected shall have a right to prompt review, by a judicial or other independent authority of that Contracting Party, of his or its case and of the valuation of his or its investment in accordance with the principles set out in this Article.

Article 6. Transfers

(1) Each Contracting Party shall guarantee the transfers of payments related to investments and returns. The transfers shall be made in a freely convertible currency, without any restriction and undue delay. Such transfers shall include in particular, though not exclusively:

(a) the capital and additional amounts necessary to maintain or increase the investments;

(b) gains, profits, interests, dividends and other current income;

(c) funds in repayment of loans directly related to a specific investment;

(d) royalties or fees;

(e) the proceeds of sale or liquidation of the whole or any part of an investment;

(f) compensations provided for in Articles 4 and 5;

(g) the earnings of natural persons of one Contracting Party who are allowed to work in connection with an investment in the territory of the other Contracting Party.

(2) Transfers shall be effected without delay in freely convertible currency, at the normal applicable exchange rate at the date of the transfer, in accordance with the procedures established by the Contracting Party in whose territory the investment was made, which shall not impair the substance of the rights set forth in this Article.

Article 7. Subrogation

(1) If a Contracting Party or its designated agency makes 4 payment to any of its own investors under a guarantee or insurance it has accorded in respect of an investment in the territory of the other Contracting Party, the latter Contracting Party shall recognize:

(a) the assignment, whether under the law or pursuant to a legal transaction in that country, of any right or claim by the investor to the former Contracting Party or its designated agency, as well as.

(b) that the former Contracting Party or its designated agency is entitled by virtue of subrogation to exercise the rights and, enforce the claims of that investors and shall assume the obligation related to the investment.

(2) The subrogated rights or claims shall not exceed the original rights or claims of the investors.

(3) In the case of subrogation as defined in Paragraph (1) above, the investor shall not pursue a claim unless authorized to do so by the Contracting Party or its designated agency.

Article 8. Settlement of Investment Disputes between a Contracting Party and an Investor of the other Contracting Party

(1) Any dispute which arises within the terms of this Agreement concerning an investment between an investor of one Contracting Party and the other Contracting Party shail, if possible, be settled amicably.

(2) If the dispute cannot thus be settled within six months following the date on which the dispute has been raised by either party, it may be submitted, upon request of the investor, either to:

- the competent tribunal of the Contracting Party in whose territory the investment was made;

- international arbitration according to the provisions of paragraph (3).

Where an investor has submitted a dispute to the aforementioned competent tribunal of the Contracting Party where the investment has been made or to international arbitration, this choice shall be final.

(3) In case of international arbitration, the dispute shall be submitted, at the investor’s choice, either to:

- The International Centre for the Settlement of Investment Disputes (ICSID) created by the Convention on the Settlement of Investment Disputes between States and Nationals of other States, opened for signature in Washington on 18 March 1965, once both Contracting Parties herein become members thereof. As far as this provision is not complied with, each Contracting Party consents that the dispute be submitted to arbitration under the regulations of the ICSID Additional Facility for the Administration of Conciliation, Arbitration and Fact-Finding Proceedings, or

- an arbitration tribunal set up from case to case in accordance with the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL).

(4) The arbitration tribunal shall decide in accordance with the provisions of this Agreement, the laws of the Contracting Party involved in the dispute, including its rules on conflict of law, the terms of any specific agreement concluded in relation to such an investment and the relevant principles of international law.

(5) The arbitral decisions shall be final and binding for the parties in the dispute. Each Contracting Party shall execute them in accordance with its laws.

Article 9. Settlement of Disputes between the Contracting Parties

(1) Disputes between the Contracting Parties concerning the interpretation or application of this Agreement shall, if possible, be settled through consultation or negotiation.

(2) If the dispute cannot thus be settled within six months, it shall upon the request of either Contracting Party be submitted to an arbitral tribunal in accordance with the provisions of this Article.

(3) The Arbitral Tribunal shall be constituted for each individual case in the following way. Within two months of the receipt of the request for arbitration each Contracting Party shall appoint one member of the tribunal. These two members shall then select a national of a third State who on approval of the two Contracting Parties shall be appointed Chairman of the Tribunal (hereinafter referred to as the "Chairman"). The Chairman shall be appointed within three months from the date of appointment of the other two members.

(4) If within the periods specified in paragraph (3) of this Article the necessary appointments have not been made, a request may be made to the President of the International Court of Justice to make the appointments. If he happens to be a national of either Contracting Party, or if he is otherwise prevented from discharging the said function, the Vice President shall be invited to make the appointments. If the Vice-President also. happens to be a national of either Contracting Party or is prevented from discharging the said function, the member of the International Court of Justice next in seniority who is not a national of either Contracting Party shall be invited to make the appointments.

(5) The Arbitral Tribunal shall reach its decision by a majority of votes. Such decision shall be binding. Each Contracting Party shall bear the cost of its own arbitrator and its representation in the arbitral proceedings; the cost of the Chairman and the remaining costs shall, in principle, be borne in equal parts by both Contracting Parties. The Arbitral Tribunal may, however, in its decision direct that a higher proportion of costs shall be borne by one of the two Contracting Parties, and this award shall be binding on both Contracting Parties. The Arbitral Tribunal shall determine its own procedure.

Article 10. Application of other Rules and Special Commitments

(1) Where a matter is governed simultaneously both by this Agreement and by other international agreement to which both Contracting Parties are parties, nothing in this Agreement shall prevent either Contracting Party or any of its investors who own investments in the territory of the other Contracting Party from taking advantage of whichever rules are more favourable to his case.

(2) If the treatment to be accorded by one Contracting Party to investors of the other Contracting Party in accordance with its laws and regulations or other specific provisions of contracts is more favourable than that accorded by this Agreement, the more favourable shall be accorded.

Article 11. Applicability of this Agreement

(1) The provisions of this Agreement shall not apply to the restments made by natural persons who are nationals of one nmtracting Party in the territory of the other Contracting Party if such persons have. at the time of the investment, been domiciled in the latter Contracting Party for more than two years, unless it is proved that the investment was admitted into its territory from abroad.

(2) The provisions of this Agreement shall apply to investments” made by investors of one Contracting Party in the territory of the other Contracting Party prior as well as after the entry into force of this Agreement, but shall not apply to any dispute concerning an investment which arose, or any claim concerning an investment which was settled before its entry into force.

Article 12. Entry Into Force, Duration and Termination

(1) Each of the Contracting Parties shall notify the other of the completion of the procedures required by its law for bringing this Agreement into force. This Agreement shall enter into force on the date of the second notification.

(2) This Agreement shall remain in force for a period of 10 years and shall continue in force thereafter until the expiration of twelve months from the date that either Contracting Party notifies in writing of its intention to terminate the Agreement.

(3) In respect of investments made prior to the termination of this Agreement, the provisions of Articles 1 to 11 shall continue to be effective for a period of ten years from the date of termination.

Done at Kiev on 9 August 1995, in two originals, in the Spanish, Ukrainian and English languages, the three texts being equally authentic. In case there is any divergence of interpretation of the provisions, the English text shall, however, prevail.

FOR THE GOVERNMENT OF THE ARGENTINE REPUBLIC

FOR THE GOVERNMENT OF UKRAINE